

# House Study Bill 149

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON LABOR  
BILL BY CHAIRPERSON OLSON)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act requiring the payment of local prevailing wage rates to  
2 persons working on public improvements for public bodies, and  
3 providing penalties and effective and applicability dates.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 1573YC 83  
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1 1 Section 1. Section 84A.5, subsection 4, Code 2009, is  
2 amended to read as follows:  
1 3 4. The division of labor services is responsible for the  
1 4 administration of the laws of this state under chapters 88,  
1 5 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 92,  
1 6 and 94A, and section 85.68. The executive head of the  
1 7 division is the labor commissioner, appointed pursuant to  
1 8 section 91.2.  
1 9 Sec. 2. NEW SECTION. 91F.1 SHORT TITLE.  
1 10 This chapter shall be known and may be cited as the "Public  
1 11 Improvement Quality Protection Act".  
1 12 Sec. 3. NEW SECTION. 91F.2 PUBLIC POLICY.  
1 13 It is in the public interest that public improvements are  
1 14 completed by the best means and highest quality of labor  
1 15 reasonably available, and that workers working on public  
1 16 improvements be compensated according to the real value of the  
1 17 services they perform. It is the policy of this state that  
1 18 the wages of workers working on public improvements should be  
1 19 at least equal to the prevailing wage rates paid for similar  
1 20 work by responsible contractors in the community as a whole in  
1 21 order to accomplish all of the following:  
1 22 1. Protect workers and their contractors and  
1 23 subcontractors from the effects of serious and unfair  
1 24 competition resulting from wage levels detrimental to  
1 25 efficiency and well-being.  
1 26 2. Ensure that contractors compete with one another on the  
1 27 basis of the ability to perform work competently and  
1 28 efficiently while maintaining community-established  
1 29 compensation standards.  
1 30 3. Recognize that local participation in public  
1 31 improvements and family wage income and benefits are essential  
1 32 to the protection of community standards.  
1 33 4. Encourage training and education of workers to industry  
1 34 skills standards.  
1 35 5. Encourage contractors and subcontractors to use funds  
2 1 allocated for employee fringe benefits for the actual purchase  
2 2 of those benefits.  
2 3 Sec. 4. NEW SECTION. 91F.3 DEFINITIONS.  
2 4 As used in this chapter, unless the context otherwise  
2 5 requires:  
2 6 1. "Commissioner" means the labor commissioner appointed  
2 7 pursuant to section 91.2 or the labor commissioner's designee.  
2 8 2. "Contractor" or "subcontractor" means a person who  
2 9 undertakes, offers to undertake, purports to have the capacity  
2 10 to undertake, or submits a bid, individually or through  
2 11 others, to engage in a public improvement.  
2 12 3. "Custom fabrication" means the fabrication of plumbing,  
2 13 heating, cooling, ventilation, architectural systems,  
2 14 structural systems, exhaust duct systems, or mechanical  
2 15 insulation.  
2 16 4. "Division" means the division of labor of the  
2 17 department of workforce development.  
2 18 5. a. "Fringe benefits" means the following for the

2 19 provision or purchase of any of the benefits enumerated in  
2 20 paragraph "b":  
2 21 (1) The contribution irrevocably made by a contractor or  
2 22 subcontractor to a trustee or to a third person pursuant to a  
2 23 plan, fund, or program.  
2 24 (2) The costs to the contractor or subcontractor which may  
2 25 be reasonably anticipated in providing benefits to workers  
2 26 pursuant to an enforceable commitment to carry out a  
2 27 financially responsible plan or program, given in writing to  
2 28 the workers affected.  
2 29 b. (1) Medical or hospital care.  
2 30 (2) Pensions or annuities on retirement or death.  
2 31 (3) Supplemental unemployment benefits.  
2 32 (4) Life insurance.  
2 33 (5) Disability and sickness insurance.  
2 34 (6) Accident insurance for nonwork-related accidents.  
2 35 (7) Vacation or holiday pay.  
3 1 (8) Defraying costs of apprenticeship programs approved by  
3 2 and registered with the United States department of labor's  
3 3 bureau of apprenticeship and training.  
3 4 6. "Interested party" means any of the following:  
3 5 a. A contractor who submits a bid for the purpose of  
3 6 securing the award of a contract for a public improvement.  
3 7 b. A subcontractor of a contractor mentioned in a bid  
3 8 referred to in paragraph "a".  
3 9 c. A worker employed by a contractor or subcontractor  
3 10 described in either paragraph "a" or "b".  
3 11 d. A labor organization that represents workers engaged in  
3 12 the same craft or classification as workers employed by a  
3 13 contractor or subcontractor described in either paragraph "a"  
3 14 or "b" and that exists, in whole or in part, for the purpose  
3 15 of negotiating with employers concerning the wages, hours, or  
3 16 terms and conditions of employment of employees.  
3 17 e. A joint labor-management committee established pursuant  
3 18 to the federal Labor Management Cooperation Act of 1978, 29  
3 19 U.S.C. } 175a.  
3 20 7. "Locality" means a county of this state.  
3 21 8. "Maintenance work" means the repair of existing public  
3 22 improvements when the size, type, or extent of the public  
3 23 improvement is not changed or increased.  
3 24 9. "Prevailing wage rate" means the hourly wage plus  
3 25 fringe benefits, which the commissioner determines prevails in  
3 26 accordance with this chapter, including all of the following:  
3 27 a. Apprentice ratios and the prevailing apprentice pay  
3 28 levels for each craft, classification, or type of worker which  
3 29 the commissioner determines prevails in accordance with  
3 30 section 91F.5.  
3 31 b. A prevailing rate for overtime pay for work in excess  
3 32 of the normal prevailing workday and for weekend overtime pay  
3 33 for each craft, classification, or type of worker, including  
3 34 apprentices.  
3 35 c. Holiday pay for holidays that prevail in the locality  
4 1 in which the work is being performed.  
4 2 10. "Public body" means the state and any of its political  
4 3 subdivisions, including but not limited to a county, city,  
4 4 township, school district, state board of regents, and public  
4 5 utility. For the purposes of this chapter, "public utility"  
4 6 includes municipally owned utilities and municipally owned  
4 7 waterworks.  
4 8 11. a. "Public improvement" means any of but not limited  
4 9 to the following that meets the criteria set out in paragraphs  
4 10 "b" and "c":  
4 11 (1) Construction, alteration, reconstruction, repair,  
4 12 rehabilitation, refinishing, refurbishing, remodeling,  
4 13 renovation, custom fabricating, maintenance, landscaping,  
4 14 improving, moving, wrecking, painting, decorating, or  
4 15 demolishing of, or adding to or subtracting from any building,  
4 16 structure, sewer, ditch, sewage disposal plant, waterworks,  
4 17 parking facility, excavation or other structure, project,  
4 18 development, or improvement, or any part thereof undertaken by  
4 19 a public body, including any of but not limited to the  
4 20 following related activities:  
4 21 (a) The erection of scaffolding or other structures or  
4 22 works.  
4 23 (b) The maintenance, repair, assembly, or disassembly of  
4 24 equipment.  
4 25 (c) The testing of materials.  
4 26 (d) The hauling of refuse from a site to an outside  
4 27 disposal location.  
4 28 (e) The cleaning of grounds or structures.  
4 29 (f) The addition to or fabrication into any structure,

4 30 project, development, or improvement of any material or  
4 31 article of merchandise undertaken by a public body.

4 32 (2) The preparation and removal of roadway construction  
4 33 zones, lane closures, flagging, or traffic diversions  
4 34 undertaken by a public body.

4 35 (3) The installation, repair, maintenance, or calibration  
5 1 of monitoring equipment for underground storage tanks  
5 2 undertaken by a public body.

5 3 (4) Work that is performed on any property or premises  
5 4 dedicated exclusively or nearly so to the completion of a  
5 5 public improvement, and transportation of supplies, material,  
5 6 and equipment to or from the property or premises undertaken  
5 7 by a public body.

5 8 b. Work on the public improvement is performed under  
5 9 public supervision or direction, and the work is financed  
5 10 wholly or in part from public funds, or if at the time of  
5 11 commencement of the public improvement all of the following  
5 12 conditions with respect to the public improvement are met:

5 13 (1) Not less than fifty-five percent of the structure is  
5 14 leased by a public body, or is subject to an agreement to be  
5 15 subsequently leased by a public body.

5 16 (2) The portion of the structure that is leased or subject  
5 17 to an agreement to be subsequently leased by a public body  
5 18 measures more than twenty thousand square feet.

5 19 c. The public improvement meets one of the following  
5 20 descriptions:

5 21 (1) The project is funded by the state or the state board  
5 22 of regents and the estimated total cost is one hundred  
5 23 thousand dollars or more.

5 24 (2) The project is funded by a school district and the  
5 25 estimated total cost is three hundred thousand dollars or  
5 26 more.

5 27 (3) The project is funded by a county with a population of  
5 28 forty thousand or more and the estimated total cost is one  
5 29 hundred thousand dollars or more. Population, for the  
5 30 purposes of this subparagraph, shall be based on the most  
5 31 recent United States census bureau decennial census figures.

5 32 (4) The project is funded by a city with a population of  
5 33 twenty thousand or more and the estimated total cost is one  
5 34 hundred thousand dollars or more. Population, for the  
5 35 purposes of this subparagraph, shall be based on the most  
6 1 recent United States census bureau decennial census figures.

6 2 (5) The total estimated cost of the project is one million  
6 3 dollars or more, regardless of the public body's population.

6 4 12. "Worker" means an individual who performs any labor or  
6 5 service for a contractor or subcontractor on a public  
6 6 improvement but does not include an individual when  
6 7 transporting supplies, materials, or equipment for a seller,  
6 8 supplier, manufacturer, or processor of materials or  
6 9 equipment. The individual is deemed an employee of a  
6 10 contractor or subcontractor unless all of the following apply:

6 11 a. The individual provides labor or services free from the  
6 12 direction or control over the means and manner of providing  
6 13 the labor or services, subject only to the right of the person  
6 14 for whom the labor or services are provided to specify the  
6 15 desired results.

6 16 b. The individual providing the labor or services is  
6 17 responsible for obtaining business registrations or licenses  
6 18 required by state law or local ordinance to provide the labor  
6 19 or services.

6 20 c. The individual providing the labor or services  
6 21 furnishes the tools and equipment necessary to provide the  
6 22 labor or services.

6 23 d. The individual providing the labor or services has the  
6 24 authority to hire and fire employees to perform the labor or  
6 25 services.

6 26 e. Payment for the labor or services is made upon  
6 27 completion of the performance of specific portions of a public  
6 28 improvement, or is made on the basis of a periodic retainer.

6 29 f. The individual providing the labor or services  
6 30 represents to the public that the labor or services are to be  
6 31 provided by an independently established business. An  
6 32 individual is engaged in an independently established business  
6 33 when four or more of the following circumstances exist:

6 34 (1) Labor or services are primarily performed at a  
6 35 location separate from the individual's residence or in a  
7 1 specified portion of the residence that is set aside for  
7 2 performing labor or services.

7 3 (2) Commercial advertising or business cards are purchased  
7 4 by the individual, or the individual is a member of a trade or  
7 5 professional association.

7 6 (3) Telephone or electronic mail listings used by the  
7 7 individual for the labor or services are different from the  
7 8 individual's personal listings.

7 9 (4) Labor or services are performed only pursuant to a  
7 10 written contract.

7 11 (5) Labor or services are performed for two or more  
7 12 persons or entities within a period of one year.

7 13 (6) The individual assumes financial responsibility for  
7 14 errors and omissions in the performance of the labor or  
7 15 services as evidenced by insurance, performance bonds, and  
7 16 warranties relating to the labor or services provided.

7 17 Sec. 5. NEW SECTION. 91F.4 ADMINISTRATION.

7 18 The commissioner and the division shall administer this  
7 19 chapter and the commissioner shall adopt rules for the  
7 20 administration and enforcement of this chapter as provided in  
7 21 section 91.6.

7 22 Sec. 6. NEW SECTION. 91F.5 DETERMINATION OF PREVAILING  
7 23 WAGES.

7 24 1. The commissioner shall determine annually and publish,  
7 25 on the first business day of July, the prevailing wage rates  
7 26 by locality for each craft, classification, or type of worker  
7 27 needed to perform work on public improvements. The rates  
7 28 shall be conclusive for one year from the date of publication  
7 29 unless superseded within the one year by a later publication  
7 30 of the commissioner, or for a longer period as provided in  
7 31 subsection 5.

7 32 2. The commissioner shall announce all prevailing wage  
7 33 rate determinations by locality and give notice by posting  
7 34 them on the portion of the department of workforce  
7 35 development's internet website related to the division. A  
8 1 printed version of the prevailing wage rates for the state  
8 2 shall be available to the public upon request to the division.

8 3 3. The public body awarding any contract for a public  
8 4 improvement, or otherwise undertaking any public improvement,  
8 5 shall obtain from the internet website the prevailing wage  
8 6 rate in the locality in which the public improvement is to be  
8 7 performed for each craft, classification, or type of worker  
8 8 needed to perform work on the public improvement. After a  
8 9 public improvement contract is awarded, or a public  
8 10 improvement is otherwise undertaken, the prevailing wage rate  
8 11 published by the commissioner and stated in the public body's  
8 12 public improvement procurement documents shall remain in  
8 13 effect throughout the duration of the public improvement  
8 14 unless superseded by a later determination and publication by  
8 15 the commissioner, or unless multiyear prevailing wage rates  
8 16 have been published by the commissioner at the time the public  
8 17 improvement procurement documents were released.

8 18 4. a. In determining the annual prevailing wage rate for  
8 19 any craft, classification, or type of worker, the commissioner  
8 20 shall ascertain and consider the applicable wage rates and  
8 21 fringe benefits established by collective bargaining  
8 22 agreements, the prevailing wage rate determinations that may  
8 23 exist for federal public improvements within the locality and  
8 24 other data obtained by the division during any prevailing wage  
8 25 rate survey of contractors who participate in an  
8 26 apprenticeship program approved by and registered with the  
8 27 United States department of labor's bureau of apprenticeship  
8 28 and training, who provide health insurance and retirement  
8 29 benefits for their workers, and who are registered with the  
8 30 division. Based upon these considerations, the commissioner  
8 31 shall calculate the prevailing wage rates based on the wage  
8 32 rate plus fringe benefits most often occurring for each craft,  
8 33 classification, or other type of worker within each locality.

8 34 b. The minimum annual prevailing wage rate determination  
9 1 established by the division shall not be lower than the  
9 2 prevailing wage rate determination that may exist for federal  
9 3 public improvements within the locality.

9 4 c. None of the benefits enumerated in this chapter may be  
9 5 considered in the determination of prevailing wage rates if  
9 6 the contractor or subcontractor is required by other federal,  
9 7 state, or local law to provide such benefits.

9 8 5. If the commissioner determines that the prevailing wage  
9 9 rate for any craft, classification, or type of worker is the  
9 10 rate established by a collective bargaining agreement  
9 11 applicable in the locality, the commissioner may adopt that  
9 12 rate by reference and that determination shall be effective  
9 13 for the life of the agreement or until the commissioner adopts  
9 14 another rate.

9 15 6. a. At any time within fifteen days after the division  
9 16 has published on the department of workforce development's  
internet website the annual prevailing wage rates for each

9 17 classification, craft, or other type of worker in the  
9 18 locality, any interested person affected may object to the  
9 19 determination or the part of the determination as the  
9 20 interested person may deem objectionable by filing a written  
9 21 notice with the commissioner by restricted certified mail as  
9 22 defined in section 618.15. When objecting to a prevailing  
9 23 wage rate determination, the interested person shall submit,  
9 24 as a part of the written notice, the prevailing wage rate the  
9 25 interested person believes to be the correct prevailing wage  
9 26 rate determination, stating the specific grounds to support  
9 27 that position. Upon receipt of the notice of objection, the  
9 28 commissioner shall reconsider the determination and shall  
9 29 affirm or modify the determination and reply in writing by  
9 30 restricted certified mail to the interested person within  
9 31 fifteen days from the date of the receipt of the notice of  
9 32 objection. Any modification to the prevailing wage rate  
9 33 determination shall be effective on the date the modification  
9 34 is published by the commissioner.

9 35 b. If the commissioner declines to modify the  
10 1 determination, within ten days upon receiving receipt of the  
10 2 commissioner's decision, the interested person affected may  
10 3 submit in writing the objection to the division by restricted  
10 4 certified mail, stating the specified grounds of the  
10 5 objection. The department of inspections and appeals shall be  
10 6 notified of the objection and set a date for a hearing before  
10 7 an administrative law judge on the objection, after giving  
10 8 notice by restricted certified mail to the interested person  
10 9 and the division at least ten days before the date of the  
10 10 hearing of the time and place of the hearing. The hearing  
10 11 shall be held within forty-five days after the objection is  
10 12 filed, and shall not be postponed or reset for a later date  
10 13 except upon the consent, in writing, of the interested person  
10 14 and the division.

10 15 7. The party requesting a hearing shall have the burden of  
10 16 establishing that the annual prevailing wage rate  
10 17 determination for that locality was not determined in  
10 18 accordance with this chapter. If the party requesting a  
10 19 hearing under this section objects to the commissioner's  
10 20 failure to include a craft, classification, or type of worker  
10 21 within the annual prevailing wage rate determination in the  
10 22 locality, the objector shall have the burden of establishing  
10 23 that there is no existing prevailing wage rate classification  
10 24 for the particular craft, classification, or type of worker in  
10 25 any of the localities under consideration.

10 26 8. The administrative law judge may in the administrative  
10 27 law judge's discretion hear each written objection filed  
10 28 separately or consolidate for hearing any one or more written  
10 29 objections filed with the division. At the hearing, the  
10 30 division shall introduce into evidence the investigation it  
10 31 instituted which formed the basis of its determination, and  
10 32 the division or any interested objectors may introduce  
10 33 evidence that is material to the determination. The  
10 34 administrative law judge shall rule upon each written  
10 35 objection and make a final determination, as the  
11 1 administrative law judge believes the evidence warrants, and  
11 2 promptly serve a copy of the final determination by personal  
11 3 service or restricted certified mail on all parties to the  
11 4 proceedings. The administrative law judge shall render a  
11 5 final determination within thirty days after the conclusion of  
11 6 the hearing.

11 7 9. If proceedings to review judicially the final  
11 8 determination of the administrative law judge are not  
11 9 instituted as provided in this section, the determination  
11 10 shall be final and binding. The provisions of section 17A.19  
11 11 shall apply to and govern all proceedings. Appeals from all  
11 12 final orders and judgments entered by the court in review of  
11 13 the final determination of the administrative law judge may be  
11 14 taken by any party to the action. In all reviews or appeals  
11 15 under this chapter, the attorney general shall represent the  
11 16 division and defend its determination.

11 17 10. This section does not give reason or provide cause for  
11 18 an injunction to halt or delay any public improvement.

11 19 Sec. 7. NEW SECTION. 91F.6 PAYMENT OF PREVAILING WAGES  
11 20 REQUIRED.

11 21 1. Contractors and subcontractors engaged in a public  
11 22 improvement shall not pay less than the current specified  
11 23 prevailing wage rates to all of their workers engaged in the  
11 24 public improvement. However, this chapter does not prohibit  
11 25 the payment of more than the prevailing wage rate to any  
11 26 workers engaged in a public improvement.

11 27 2. All contractors and subcontractors required to pay the

11 28 prevailing wage rate under this chapter shall pay the wages in  
11 29 legal tender, without any deduction for food, sleeping  
11 30 accommodations, transportation, use of tools or safety  
11 31 equipment, vehicle or equipment rental, or any other thing of  
11 32 any kind or description.  
11 33 Sec. 8. NEW SECTION. 91F.7 REQUIREMENTS FOR PUBLIC  
11 34 IMPROVEMENTS.  
11 35 1. The public body awarding a contract for a public  
12 1 improvement or otherwise undertaking a public improvement  
12 2 shall specify in the call for bids for the contract that this  
12 3 chapter applies to the public improvement.  
12 4 2. If a public improvement requires the payment of  
12 5 prevailing wage rates, the public body shall require the  
12 6 contractor to execute a written instrument that not less than  
12 7 the prevailing wage rate shall be paid to all workers  
12 8 performing work on the public improvement. The written  
12 9 instrument shall also contain a provision that if it is found  
12 10 that any of the contractor's workers engaged in the public  
12 11 improvement has been paid at a wage rate less than the  
12 12 prevailing wage rate required by this chapter, the public body  
12 13 may terminate the contractor's right to proceed with the work  
12 14 and the contractor and its sureties shall be liable to the  
12 15 public body for any excess costs occasioned by the failure to  
12 16 pay the prevailing wage rate. The written instrument shall  
12 17 have attached a list of the specified prevailing wage rates  
12 18 for all crafts, classifications, or types of workers in the  
12 19 locality for each worker needed to be included in the contract  
12 20 for the public improvement.  
12 21 3. If a contract is let for a public improvement requiring  
12 22 the payment of prevailing wage rates, the public body awarding  
12 23 the contract shall cause to be inserted in the public  
12 24 improvement specifications and contract a stipulation that not  
12 25 less than the prevailing wage rate shall be paid to all  
12 26 workers performing work under the contract. The contract  
12 27 shall also contain a provision to the effect that if it is  
12 28 found that any of the contractor's workers engaged in the  
12 29 public improvement has been paid at a wage rate less than the  
12 30 prevailing wage rate required by this chapter, the public body  
12 31 may terminate the contractor's right to proceed with the work  
12 32 and the contractor and its sureties shall be liable to the  
12 33 public body for any excess costs occasioned by the failure to  
12 34 pay the prevailing wage rate. All bid specifications shall  
12 35 list the specified prevailing wage rates for all crafts,  
13 1 classifications, or types of workers in the locality for each  
13 2 worker needed to be included in the contract.  
13 3 4. If a public improvement requires the payment of  
13 4 prevailing wage rates, the contractor shall require any  
13 5 subcontractors engaged by the contractor on the public  
13 6 improvement to execute a written instrument that not less than  
13 7 the prevailing wage rates shall be paid to all workers  
13 8 performing work on the public improvement. The written  
13 9 instrument shall also contain a provision that if it is found  
13 10 that any of the subcontractor's workers engaged in the public  
13 11 improvement has been paid at a wage rate less than the  
13 12 prevailing wage rate required by this chapter, the public body  
13 13 may terminate the subcontractor's right to proceed with the  
13 14 work and the subcontractor and its sureties shall be liable to  
13 15 the public body for any excess costs occasioned by the failure  
13 16 to pay the prevailing wage rate. The written instrument shall  
13 17 have attached a list of the specified prevailing wage rates  
13 18 for all crafts, classifications, or types of workers in the  
13 19 locality for each worker needed to be included in the  
13 20 contract.  
13 21 5. If a subcontract is let for a public improvement  
13 22 requiring the payment of the prevailing wage rate, the  
13 23 contractor to whom the contract is awarded shall insert into  
13 24 the subcontract and into the public improvement project  
13 25 specifications for each subcontract a written stipulation that  
13 26 not less than the prevailing wage rate shall be paid to all  
13 27 workers performing work under the subcontract. A  
13 28 subcontractor shall insert into each lower-tiered subcontract  
13 29 a stipulation that not less than the prevailing wage rate  
13 30 shall be paid to all workers performing work under the  
13 31 subcontract. The subcontract shall also contain a provision  
13 32 that if it is found that any subcontractor's workers engaged  
13 33 in the public improvement have been paid at a wage rate less  
13 34 than the prevailing wage rate required by this chapter, the  
13 35 public body may terminate the subcontractor's right to proceed  
14 1 with the work and the subcontractor and its sureties shall be  
14 2 liable to the public body for any excess costs occasioned by  
14 3 the failure to pay the prevailing wage rate. All bid

14 4 specifications shall list the specified prevailing wage rates  
14 5 for all crafts, classifications, or types of workers in the  
14 6 locality for each worker needed to be included in the  
14 7 subcontract.

14 8 6. A contractor or subcontractor engaging in a public  
14 9 improvement shall submit a performance bond in an amount  
14 10 determined by the public body which bond shall include a  
14 11 provision that will guarantee the payment of the prevailing  
14 12 wage rates as required by the contract.

14 13 7. Before final payment is made by or on behalf of a  
14 14 public body of any sum or sums due on a public improvement,  
14 15 the treasurer of the public body or other officer or person  
14 16 charged with the custody and disbursement of the funds of the  
14 17 public body shall require the contractor and subcontractor to  
14 18 file a written statement with the public body, in a form  
14 19 satisfactory to the division, certifying to the amounts then  
14 20 due and owing from the contractor and subcontractor to any and  
14 21 all workers for wages due on account of the public  
14 22 improvement, setting forth the names of the persons whose  
14 23 wages are unpaid and the amount due to each respectively. The  
14 24 statement shall be verified by the oath of the contractor or  
14 25 subcontractor, as the case may be, that the contractor or  
14 26 subcontractor has read the statement certified by the  
14 27 contractor or subcontractor, knows the contents, and that the  
14 28 statement is true in accordance with the contractor's or  
14 29 subcontractor's own knowledge. However, this chapter shall  
14 30 not impair the right of a contractor to receive final payment  
14 31 from a public body because of the failure of a subcontractor  
14 32 to comply with provisions of this chapter. The treasurer of  
14 33 the public body or other officer or person charged with the  
14 34 custody and disbursement of the funds of the public body shall  
14 35 withhold the amount, if any, listed on the verified statement  
15 1 filed pursuant to this section for the benefit of the worker  
15 2 whose wages are unpaid as shown by the verified statement  
15 3 filed by the contractor or subcontractor, and the public body  
15 4 shall pay directly to any worker the amount shown by the  
15 5 statement to be due to the worker for the wages. Payment  
15 6 shall discharge the obligation of the contractor or  
15 7 subcontractor to the person receiving the payment to the  
15 8 extent of the amount of the payment.

15 9 8. The public body awarding a contract for a public  
15 10 improvement or otherwise undertaking a public improvement  
15 11 shall notify the commissioner in writing, on a form prescribed  
15 12 by the commissioner, if a contract subject to the provisions  
15 13 of this chapter has been awarded. The public body shall file  
15 14 the notification with the commissioner within thirty days  
15 15 after the contract is awarded or before commencement of the  
15 16 public improvement, and shall include a list of all first-tier  
15 17 subcontractors.

15 18 Sec. 9. NEW SECTION. 91F.8 FEDERAL PUBLIC IMPROVEMENTS  
15 19 == NOT APPLICABLE.

15 20 The provisions of this chapter shall not be applicable to  
15 21 public improvements financed entirely by federal funds which  
15 22 require a prevailing wage rate determination by the United  
15 23 States department of labor. However, unless a federal  
15 24 provision applies, if a public improvement is financed in part  
15 25 by a public body and in part by federal funds, the higher of  
15 26 the prevailing wage rates shall prevail for the public  
15 27 improvement.

15 28 Sec. 10. NEW SECTION. 91F.9 RECORDS REQUIRED.

15 29 1. While participating in a public improvement, the  
15 30 contractor and each subcontractor shall do all of the  
15 31 following:

15 32 a. Make and keep, for a period of not less than three  
15 33 years, accurate records of all workers employed by the  
15 34 contractor or subcontractor on the public improvement. The  
15 35 records shall include each worker's name, address, telephone  
16 1 number when available, social security number, trade  
16 2 classification, the hourly wages paid in each pay period, the  
16 3 number of hours worked each day, and the starting and ending  
16 4 times of work each day.

16 5 b. Submit weekly a certified payroll to the public body in  
16 6 charge of the public improvement. The certified payroll shall  
16 7 consist of a complete copy of the records identified in  
16 8 paragraph "a". The certified payroll shall be accompanied by  
16 9 a statement signed by the contractor or subcontractor which  
16 10 avers that the records are true and accurate and the hourly  
16 11 wages paid to each worker are not less than the prevailing  
16 12 wage rate required by this chapter.

16 13 2. The public body in charge of the public improvement  
16 14 shall keep the records submitted in accordance with subsection

16 15 1, paragraph "b", for a period of not less than three years.  
16 16 The records shall be considered public records and be made  
16 17 available in accordance with chapter 22. Personal information  
16 18 submitted in accordance with subsection 1, paragraph "a",  
16 19 including names, addresses, social security numbers, telephone  
16 20 numbers, and other identifying information shall remain  
16 21 confidential and shall not be made public.

16 22 3. The contractor and each subcontractor shall make  
16 23 available for inspection the records identified in subsection  
16 24 1, paragraph "a", to the public body in charge of the public  
16 25 improvement, its officers and agents, and to the division.

16 26 4. For the purpose of verifying the accuracy of the  
16 27 records submitted pursuant to this section, the contractor and  
16 28 each subcontractor shall make its workers available at the  
16 29 site of the public improvement for interview by the public  
16 30 body in charge of the public improvement, its officers and  
16 31 agents, and the division.

16 32 5. Contractors and subcontractors performing work on  
16 33 public improvements subject to this chapter shall post the  
16 34 prevailing wage rates for each craft, classification, or type  
16 35 of workers involved in the public improvement in a prominent  
17 1 and easily accessible place at the site of the public  
17 2 improvement or at the place or places used by the contractor  
17 3 or subcontractor to pay workers their wages.

17 4 Sec. 11. NEW SECTION. 91F.10 POWERS OF COMMISSIONER.

17 5 The commissioner or the commissioner's designee shall do  
17 6 all of the following:

17 7 1. Inquire diligently about any complaint of a violation  
17 8 of this chapter, institute actions for penalties prescribed,  
17 9 and enforce generally the provisions of this chapter.

17 10 2. Sue for injunctive relief against the awarding of a  
17 11 contract, the undertaking of a public improvement, or the  
17 12 continuation of a public improvement when the prevailing wage  
17 13 rate requirements of this chapter have not been met.

17 14 3. Investigate and ascertain the wages of workers engaged  
17 15 in any public improvement in this state.

17 16 4. a. Enter and inspect the place of business or  
17 17 employment of a contractor, subcontractor, or workers employed  
17 18 on a public improvement in this state, for the purpose of  
17 19 examining and inspecting books, registers, payrolls, and other  
17 20 records of a contractor or subcontractor that in any way  
17 21 relate to or have a bearing upon the question of wages, hours,  
17 22 and other conditions of employment of workers covered under  
17 23 this chapter.

17 24 b. Copy the books, registers, payrolls, and other records  
17 25 as the commissioner or the commissioner's designee deems  
17 26 necessary or appropriate.

17 27 c. Question the workers for the purpose of ascertaining  
17 28 whether the provisions of this chapter have been and are being  
17 29 complied with.

17 30 d. Administer oaths, take or cause to be taken depositions  
17 31 of witnesses, and require by subpoena the attendance and  
17 32 testimony of witnesses and the production of all books,  
17 33 registers, payrolls, and other evidence relative to the matter  
17 34 under investigation or hearing.

17 35 5. Require from a contractor or subcontractor full and  
18 1 correct statements in writing, including sworn statements,  
18 2 with respect to wages, hours, names, addresses, and other  
18 3 information pertaining to its workers and their employment, as  
18 4 the commissioner or the commissioner's designee may deem  
18 5 necessary or appropriate.

18 6 6. Require a contractor or subcontractor to file, within  
18 7 ten days of receipt of a request, any records enumerated in  
18 8 subsections 3 and 4, sworn as to their validity and accuracy  
18 9 as required by subsection 5. If the contractor or  
18 10 subcontractor fails to provide the requested records within  
18 11 ten days, the commissioner may direct, within fifteen days  
18 12 after the end of the ten-day period, that the fiscal or  
18 13 financial officer charged with the custody and disbursements  
18 14 of the funds of the public body, which contracted for  
18 15 construction of the public improvement or undertook the public  
18 16 improvement, to immediately withhold from payment to the  
18 17 contractor or subcontractor up to twenty-five percent of the  
18 18 amount to be paid to the contractor or subcontractor under the  
18 19 terms of the contract or written instrument under which the  
18 20 public improvement is being performed. The amount withheld  
18 21 shall be immediately released upon receipt by the public body  
18 22 of a notice from the commissioner indicating that the request  
18 23 for records as required by this section has been satisfied.

18 24 7. If a contractor or subcontractor fails to provide  
18 25 requested records in accordance with subsection 6 within ten



18 26 days, direct, within fifteen days after the end of the ten-day  
18 27 period, the fiscal or financial officer charged with the  
18 28 custody and disbursements of the funds of the public body,  
18 29 which contracted for construction of the public improvement or  
18 30 undertook the public improvement, to pay directly to workers  
18 31 employed by the contractor or subcontractor from the amount  
18 32 withheld from the contractor or subcontractor pursuant to  
18 33 subsection 6 any prevailing wage rates found to be due and  
18 34 payable to the workers.

18 35 8. Contract with a person registered as a public  
19 1 accountant under chapter 542 to conduct an audit of a  
19 2 contractor, subcontractor, or public body.

19 3 Sec. 12. NEW SECTION. 91F.11 NOTICE OF VIOLATIONS.

19 4 1. For purposes of this section:

19 5 a. "Accurate records" means the payroll records required  
19 6 to be filed with the public body in charge of the public  
19 7 improvement as required by section 91F.9. "Accurate records"  
19 8 also means the hourly rate of contribution and costs paid for  
19 9 fringe benefits and whether the contributions and costs of the  
19 10 fringe benefits were paid into a fund or paid directly to the  
19 11 worker.

19 12 b. "Decision" means a determination by the division that a  
19 13 single violation of this chapter has occurred, warranting the  
19 14 commissioner to issue a notice of violation to a contractor or  
19 15 subcontractor.

19 16 c. "Notice of second violation" is a formal written notice  
19 17 issued by the division advising a contractor or subcontractor  
19 18 that a second or subsequent violation has occurred within  
19 19 three years from the date of the notice of a first violation.

19 20 d. "Notice of violation" means a formal written notice  
19 21 issued by the division to a contractor or subcontractor that  
19 22 the division has made a decision that the contractor or  
19 23 subcontractor has violated this chapter.

19 24 e. "Violation" means a written decision by the division  
19 25 that a contractor or subcontractor has done one of the  
19 26 following:

19 27 (1) Failed or refused to pay the prevailing wage rate to  
19 28 one or more workers as required by this chapter.

19 29 (2) Failed to keep accurate records as required by this  
19 30 chapter.

19 31 (3) Failed to produce for the division accurate records or  
19 32 produced records not in compliance with this chapter.

19 33 (4) Refused to submit records or testimony to the division  
19 34 in response to a subpoena issued in accordance with this  
19 35 chapter.

20 1 (5) Refused to comply with the certified payroll provision  
20 2 of section 91F.9.

20 3 (6) Refused the division access, at any reasonable hour at  
20 4 a location within the state, to inspect the contractor's or  
20 5 subcontractor's records as required by this chapter.

20 6 (7) Failed to insert into each subcontract or lower-tiered  
20 7 subcontract and into the public improvement specifications for  
20 8 each subcontract or lower-tiered subcontract or provide a  
20 9 written instrument if no contract exists, a written  
20 10 stipulation that not less than the prevailing wage rate be  
20 11 paid as required by this chapter, and a statement that if it  
20 12 is found that a subcontractor's workers engaged in the public  
20 13 improvement have been paid at a rate of wages less than the  
20 14 prevailing wage rate required to be paid by the contract, the  
20 15 public body shall terminate the subcontractor's right to  
20 16 proceed with the work.

20 17 (8) Failed to obtain a bond in the proper amount that  
20 18 guarantees the payment of the prevailing wage rates required  
20 19 in the contract.

20 20 (9) Failed to post the prevailing wage rates as required  
20 21 by this chapter.

20 22 2. After receipt of a complaint or on the division's  
20 23 initiative, the commissioner shall review the investigative  
20 24 file to determine whether a violation has occurred for which  
20 25 the contractor or subcontractor must be given notice. All  
20 26 information and observations made during an audit or  
20 27 investigation shall be considered and shall constitute the  
20 28 basis for the division's decision that this chapter has been  
20 29 violated and that a notice of violation is required to be  
20 30 issued. The notice of violation shall identify the specific  
20 31 violation and the amount of moneys estimated due the division  
20 32 and in controversy based on reasons contained in the  
20 33 investigative file.

20 34 3. In making a decision that a contractor or subcontractor  
20 35 has failed to allow the commissioner access to accurate  
21 1 records, the commissioner shall rely on the information

21 2 contained in the investigative file, the certified payroll  
21 3 records filed with the public body in charge of the public  
21 4 improvement or any other information, and shall assess a  
21 5 separate violation for each day worked by each worker on the  
21 6 public improvement. Each decision of a separate violation  
21 7 shall be listed in the notice of violation.

21 8 4. In determining that this chapter has been violated and  
21 9 that the issuance of a notice of violation is required, the  
21 10 commissioner shall base the decision on one or any combination  
21 11 of the following reasons:

21 12 a. The severity of the violations, which includes the  
21 13 following:

21 14 (1) The amount of wages that are determined to be  
21 15 underpaid pursuant to this chapter.

21 16 (2) The activity or conduct complained of that violates  
21 17 the requirements of this chapter and was not merely a  
21 18 technical, nonsubstantive error. Examples of a technical  
21 19 error include but are not limited to a mathematical error,  
21 20 bookkeeping error, transposition of numbers, or computer or  
21 21 programming error.

21 22 b. The nature and duration of the present violation and  
21 23 the prior history of the contractor or subcontractor related  
21 24 to this history. The prior history considered shall not  
21 25 exceed seven years before the date of the notice of violation.

21 26 c. Whether the contractor or subcontractor filed certified  
21 27 payroll records with the public body in charge of the public  
21 28 improvement; whether the contractor or subcontractor has kept  
21 29 payroll records and accurate records for three years; and  
21 30 whether the contractor or subcontractor produced certified  
21 31 payroll records in accordance with section 91F.9.

21 32 d. Whether the contractor or subcontractor has violated  
21 33 any other provision of this chapter.

21 34 5. The notices of the first, second, and subsequent  
21 35 violations shall be sent by restricted certified mail,  
22 1 addressed to the last known address of the contractor or  
22 2 subcontractor involved. The notices shall contain a reference  
22 3 to the specific provisions of this chapter alleged to have  
22 4 been violated, identify the particular public improvement  
22 5 involved, identify the conduct complained of, and identify  
22 6 whether the notice is a first, second, or subsequent notice,  
22 7 and include a contractor's or subcontractor's statement of  
22 8 liabilities.

22 9 Sec. 13. NEW SECTION. 91F.12 VIOLATIONS == REMEDIES.

22 10 1. If the commissioner determines that a public body has  
22 11 divided a public improvement into more than one contract for  
22 12 the purpose of avoiding compliance with this chapter, the  
22 13 commissioner shall issue an order compelling compliance. In  
22 14 making a determination whether a public body has divided a  
22 15 public improvement into more than one contract for the purpose  
22 16 of avoiding compliance with this chapter, the commissioner  
22 17 shall consider all of the following:

22 18 a. The physical separation of the public improvement  
22 19 structures.

22 20 b. The timing of the work on the public improvement phases  
22 21 or structures.

22 22 c. The continuity of public improvement contractors and  
22 23 subcontractors working on public improvement parts or phases.

22 24 d. The manner in which the public body and the contractor  
22 25 and subcontractors administer and implement work on the public  
22 26 improvement.

22 27 2. A worker employed by the contractor or subcontractor  
22 28 who is paid less than the specified prevailing wage rate under  
22 29 this chapter shall have a private right of action for the  
22 30 difference between the amount so paid and the specified  
22 31 prevailing wage rate, together with costs and reasonable  
22 32 attorney fees as shall be allowed by the court.

22 33 3. The contractor or subcontractor shall additionally be  
22 34 liable to the department for fifty percent of the  
22 35 underpayments and shall be additionally liable to the worker  
23 1 for punitive damages in an amount equal to five percent of the  
23 2 liability to the division for underpayments for each month  
23 3 following the date of payment during which underpayments  
23 4 remain unpaid, together with costs and reasonable attorney  
23 5 fees as shall be allowed by the court.

23 6 4. If a second or subsequent action to recover  
23 7 underpayments is brought against a contractor or subcontractor  
23 8 within a three-year period and the contractor or subcontractor  
23 9 is found liable for underpayments to a worker, the contractor  
23 10 or subcontractor shall be liable to the division for  
23 11 seventy-five percent of the underpayments payable as a result  
23 12 of the second or subsequent action, additionally liable for

23 13 ten percent of the amount of the liability to the division for  
23 14 underpayments for each month following the date of payment  
23 15 during which the underpayments remain unpaid, and liable for  
23 16 triple the difference between the amount so paid to the worker  
23 17 and the specified prevailing wage rate required, together with  
23 18 costs and reasonable attorney fees as shall be allowed by the  
23 19 court. The three-year period begins to run from the date the  
23 20 contractor or subcontractor is determined liable for the first  
23 21 violation.

23 22 5. The commissioner and any interested party shall also  
23 23 have a right of action on behalf of a worker who has a right  
23 24 of action under this chapter. An action brought to recover  
23 25 the same shall be deemed to be a suit for wages, and all  
23 26 judgments entered in the action shall have the same force and  
23 27 effect as other judgments for wages. At the request of a  
23 28 worker employed by a contractor or subcontractor who is paid  
23 29 less than the prevailing wage rate required by this chapter,  
23 30 the commissioner may take an assignment of the wage claim in  
23 31 trust for the assigning worker and may bring any legal action  
23 32 necessary to collect the claim, and the contractor or  
23 33 subcontractor shall be required to pay the expenses of the  
23 34 division incurred in collecting the claim.

23 35 6. In circumstances where a worker may not be available to  
24 1 receive a payment or judgment, the payment due the worker  
24 2 shall revert to the division after one year elapses from the  
24 3 time payment was attempted to be made or judgment was  
24 4 rendered.

24 5 7. a. It is a violation of this chapter for a contractor  
24 6 or subcontractor to do any of the following:

24 7 (1) To request or demand, either before or after the  
24 8 worker is engaged, that a worker pay back, return, donate,  
24 9 contribute, or give any part or all of the worker's wages,  
24 10 salary, or thing of value, to any person, upon the statement,  
24 11 representation, or understanding that failure to comply with  
24 12 the request or demand will prevent the worker from procuring  
24 13 or retaining employment.

24 14 (2) To directly or indirectly pay, request, or authorize  
24 15 any other person to violate this chapter.

24 16 b. This subsection does not apply to an agent or  
24 17 representative of a duly constituted labor organization acting  
24 18 in the collection of dues or assessments of the organization.

24 19 8. In addition to other penalties provided under this  
24 20 chapter, whoever induces a worker working on a public  
24 21 improvement subject to this chapter to give up or forego any  
24 22 part of the prevailing wage rates to which the worker is  
24 23 entitled under this chapter by threat not to employ or by  
24 24 threat of dismissal from employment is guilty of a serious  
24 25 misdemeanor. An agreement between the worker and the  
24 26 contractor or subcontractor to work for less than the  
24 27 specified prevailing wage rate shall not be a defense to  
24 28 criminal prosecution.

24 29 9. a. A contract shall not be awarded to a contractor or  
24 30 subcontractor who, on two separate occasions within a  
24 31 three-year period, has been determined to have violated this  
24 32 chapter, or to any firm, corporation, partnership, or  
24 33 association in which the contractor or subcontractor has any  
24 34 interest until five years have elapsed from the date on which  
24 35 a final determination is rendered finding the contractor or  
25 1 subcontractor in violation of this chapter.

25 2 b. For the purposes of this subsection, "any interest"  
25 3 means an interest in the entity bidding or performing work on  
25 4 the public improvement, whether as an owner, partner, officer,  
25 5 manager, employee, agent, consultant, or representative. "Any  
25 6 interest" includes but is not limited to all instances where  
25 7 the barred contractor or subcontractor receives payments,  
25 8 whether cash or any other form of compensation, from any  
25 9 entity bidding or performing work on the public improvement,  
25 10 or enters into a contract with the entity bidding or  
25 11 performing work on the public improvement for services  
25 12 performed or to be performed under contract that have been or  
25 13 will be assigned or sublet, or for vehicles, tools, equipment,  
25 14 or supplies that have been or will be sold, rented, or leased  
25 15 during the period from the initiation of the barring  
25 16 proceedings until the end of the term of the barring period.  
25 17 "Any interest" does not include shares held in a publicly  
25 18 traded corporation if the shares were not received as  
25 19 compensation after the barring of an entity bidding or  
25 20 performing work on a public improvement.

25 21 10. If the division determines that a contractor or  
25 22 subcontractor has violated this chapter on two separate  
25 23 occasions within a three-year period, the division shall list

25 24 on the department of workforce development's internet website  
25 25 and keep on record the name of the contractor or subcontractor  
25 26 and give notice by restricted certified mail of the list to  
25 27 any public body requesting the list.

25 28 11. Upon a determination that a contractor or  
25 29 subcontractor has violated this chapter on two separate  
25 30 occasions within a three-year period, the division shall  
25 31 notify the violating contractor or subcontractor by restricted  
25 32 certified mail. The contractor or subcontractor has ten  
25 33 working days to request of the division a hearing before an  
25 34 administrative law judge on the alleged violation. Failure to  
25 35 respond within ten working days shall result in automatic and  
26 1 immediate barring of the violator from work and placement and  
26 2 publication of the violator's name on the department of  
26 3 workforce development's internet website. If the contractor  
26 4 or subcontractor requests a hearing within ten working days by  
26 5 restricted certified mail, the department of inspections and  
26 6 appeals shall set a hearing before an administrative law judge  
26 7 on the alleged violation. The hearing shall take place no  
26 8 later than forty-five calendar days after the receipt by the  
26 9 division of the request for a hearing. An action by an  
26 10 administrative law judge constitutes final agency action and  
26 11 is subject to judicial review under section 17A.19.

26 12 12. The attorney general shall prosecute the cases  
26 13 identified in this section upon complaint by the commissioner  
26 14 or by any interested person. In any proceeding brought  
26 15 pursuant to this section, the commissioner shall be  
26 16 represented by the attorney general.

26 17 13. This section does not give reason or provide cause for  
26 18 an injunction to halt or delay any public improvement.

26 19 Sec. 14. NEW SECTION. 91F.13 APPRENTICES.

26 20 This chapter shall not prevent the employment of  
26 21 apprentices upon public improvements. However, an apprentice  
26 22 employed on a public improvement must be registered with the  
26 23 United States department of labor's bureau of apprenticeship  
26 24 and training under an apprenticeship program registered with  
26 25 that bureau, paid the proper wages specified in the standards  
26 26 of apprenticeship, and engaged only in the trade to which the  
26 27 apprentice is registered. If the apprentice is employed on a  
26 28 public improvement in a trade to which the apprentice is not  
26 29 registered with the United States department of labor's bureau  
26 30 of apprenticeship and training, the apprentice shall be  
26 31 treated as any other worker under this chapter.

26 32 Sec. 15. NEW SECTION. 91F.14 PUBLICLY OWNED HORIZONTAL  
26 33 TRANSPORTATION INFRASTRUCTURE EXCEPTION.

26 34 1. Notwithstanding other provisions of this chapter,  
26 35 except for the threshold criteria of section 91F.3, subsection  
27 1 11, paragraph "c", federal Davis-Bacon Act prevailing wage  
27 2 rates and procedures, as defined in 29 C.F.R. pts. 1, 3, and  
27 3 5, and administered by the public body, shall apply to public  
27 4 improvements that are publicly owned horizontal transportation  
27 5 infrastructure, which includes but is not limited to roads and  
27 6 streets as defined in section 306.3.

27 7 2. This section applies only to public improvements that  
27 8 are publicly owned horizontal transportation infrastructure  
27 9 let for bid on or after July 1, 2009.

27 10 Sec. 16. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
27 11 3, shall not apply to this Act.

27 12 Sec. 17. EFFECTIVE AND APPLICABILITY DATES.

27 13 1. Except as provided in subsection 2, this Act takes  
27 14 effect July 1, 2009, and applies only to public improvements  
27 15 let for bid on or after that date.

27 16 2. This Act takes effect July 1, 2010, for public  
27 17 improvements in state-managed parks and state-managed  
27 18 destination parks.

27 19 EXPLANATION

27 20 This bill requires a contractor to pay workers the same  
27 21 hourly wage plus fringe benefits for certain public  
27 22 improvements as the contractor would pay workers for a private  
27 23 construction or improvement project. The bill allows the  
27 24 per-hour wage rate to be based on what is normally paid in the  
27 25 area by contractors for similar projects, and to be adjusted  
27 26 on a yearly basis by the department of workforce development.  
27 27 The bill includes specific criteria, such as cost of the  
27 28 public improvement and the population of the city or county,  
27 29 for the project to qualify for the prevailing wage rate.

27 30 The wage rates that the workers must be paid shall also  
27 31 include benefits such as medical care, life insurance,  
27 32 overtime pay, and vacation and holiday pay. The bill applies  
27 33 to any public improvement that receives money from a public  
27 34 body and includes most types of public improvements from

27 35 construction to road maintenance to painting to hauling.

28 1 The labor commissioner determines the wage rates for  
28 2 specific geographical areas and for specific crafts,  
28 3 classifications, and types of workers. This information must  
28 4 be posted on the department of workforce development's  
28 5 internet website. In determining what the wage rate for a  
28 6 worker is, the commissioner may consult collective bargaining  
28 7 agreements, wage rate determinations for federal projects in  
28 8 the same area, and other information the department may  
28 9 receive from contractors who participate in an apprenticeship  
28 10 program approved by the federal bureau of apprenticeship and  
28 11 training.

28 12 Any person affected by the wage rates has 15 days after the  
28 13 department of workforce development has posted the wage rates  
28 14 on its website to object in writing, stating the specific  
28 15 reason for the objection, to the labor commissioner. The  
28 16 commissioner must reconsider the determination being objected  
28 17 to, and either affirm or modify it within 15 days of receiving  
28 18 the objection.

28 19 If the commissioner declines to modify the determination,  
28 20 with 10 days, the person affected may submit an objection in  
28 21 writing to the division, stating the specific reasons for the  
28 22 objection. A hearing must be set by the department of  
28 23 inspections and appeals before an administrative law judge  
28 24 within 45 days after the objection is filed. The person who  
28 25 filed the objection must show the administrative law judge  
28 26 that the wage rate was somehow made in error. The division is  
28 27 required to show how it determined the wage rate. The  
28 28 administrative law judge must make a decision about the wage  
28 29 rate within 30 days and it is considered a final  
28 30 determination.

28 31 The bill requires that contractors and subcontractors not  
28 32 pay the workers less than the established wage rate but does  
28 33 not prohibit them from paying the workers more than the wage  
28 34 rate. The wage rate must be paid without any deductions for  
28 35 food, sleeping quarters, use of tools, or safety equipment.

29 1 The bill also requires the public body to monitor the  
29 2 contractors and subcontractors to ensure that the wage rate is  
29 3 paid. A call for bids must state that the wage rate must be  
29 4 included in the bids for the public improvement. All bids  
29 5 shall list the specific wage rates for each craft,  
29 6 classification, and type of worker needed for the public  
29 7 improvement. All contractors and subcontractors are required  
29 8 to sign a contract that states they will pay workers the wage  
29 9 rate determined by the division. If the contractors and  
29 10 subcontractors are found to not be paying the wage rate, the  
29 11 contract states that the contractor's or subcontractor's right  
29 12 to work on the public improvement and get paid for work  
29 13 already done may be terminated.

29 14 Before the contractor or subcontractor receives the final  
29 15 payment for the public improvement, the public body overseeing  
29 16 the public improvement must certify the bills include proper  
29 17 amounts due the workers, and the contractor or subcontractor  
29 18 must swear under oath that the records are accurate.

29 19 The bill does not apply to public improvement projects  
29 20 funded by the federal government. However, unless a federal  
29 21 provision applies, if a public improvement project is financed  
29 22 by both a state public body and the federal government, then  
29 23 the higher of the applicable wage rates shall be paid to the  
29 24 workers.

29 25 The bill also requires that contractors and subcontractors  
29 26 keep detailed records for at least three years about the  
29 27 workers, the rates paid, and the hours worked for each public  
29 28 improvement. The records are public records and must be  
29 29 available for inspection. However, workers' personal  
29 30 information is not available to the public for inspection.  
29 31 During the public improvement, a contractor or subcontractor  
29 32 must present a certified weekly payroll to demonstrate that  
29 33 the correct and full wage rate is being paid to workers. The  
29 34 contractors and subcontractors must all make workers available  
29 35 on-site to officials for interviews so that the records'  
30 1 accuracy can be checked. Contractors and subcontractors must  
30 2 also post the wage rates for each craft, classification, and  
30 3 type of worker in a public place where workers can see the  
30 4 posting or at the place where they receive their wages.

30 5 The commissioner is given specific powers for  
30 6 investigation, enforcement, and penalization. The  
30 7 commissioner may sue to prevent a contractor or subcontractor  
30 8 from being awarded a contract for a public improvement when  
30 9 the wage rate requirements have not been met. The  
30 10 commissioner is given the power to withhold payments if a

30 11 contractor or subcontractor does not produce records upon  
30 12 request and to pay the workers directly if the contractor or  
30 13 subcontractor continues to refuse to provide records.  
30 14 After receiving a complaint, the commissioner shall  
30 15 investigate whether there has been a violation. If the  
30 16 commissioner determines there has been a violation, the  
30 17 contractor or subcontractor must be given notice of that  
30 18 violation. The notice is a formal written statement from the  
30 19 department of workforce development that states the specific  
30 20 violation and the amount of money due as a penalty.  
30 21 If a public body has divided up a public improvement to  
30 22 avoid having to pay the wage rate, the commissioner shall  
30 23 order compliance. A worker who is paid less than the wage  
30 24 rate set by this law can sue for the difference in payment and  
30 25 collect the difference along with costs and attorney fees in  
30 26 court.  
30 27 The contractor or subcontractor shall also have to pay the  
30 28 department of workforce development 50 percent of the  
30 29 underpayment and is liable to the worker for punitive damages  
30 30 of up to five percent of the underpayments for each month the  
30 31 underpayment remains unpaid plus costs and attorney fees.  
30 32 If a second or subsequent action for underpaying a worker  
30 33 is brought against a contractor or subcontractor within a  
30 34 three-year period and the contractor or subcontractor is  
30 35 liable, the contractor or subcontractor shall pay the  
31 1 department of workforce development 75 percent of the  
31 2 underpayment, pay the department 10 percent of the penalty for  
31 3 underpayments for each month following it that the  
31 4 underpayment remains unpaid, and is liable for triple the  
31 5 difference between the amount paid to the worker and the  
31 6 amount due under the wage rate set by the department plus  
31 7 costs and attorney fees.  
31 8 The commissioner or any interested party has a right of  
31 9 action on behalf of any individual who has a right of action  
31 10 under the bill. The commissioner may file a lawsuit in trust  
31 11 for a worker who assigns the claim and then bring legal action  
31 12 to collect the claim. The contractor shall be required to pay  
31 13 the expenses for collection of the claim.  
31 14 A person may not ask, demand, receive, donate, give, or  
31 15 agree to give back any part of a worker's wages or thing of  
31 16 value to any person who asserts that failing to do so will  
31 17 prevent the worker from keeping or getting work. However,  
31 18 this provision does not apply to authorized labor organization  
31 19 representatives.  
31 20 In addition to other penalties under this law, anyone who  
31 21 attempts to get a worker to give up any part of compensation  
31 22 on a public improvement by threat not to hire or by threat of  
31 23 firing is guilty of a serious misdemeanor. Any agreement to  
31 24 work for less than the determined wage rate is not a defense  
31 25 to criminal prosecution.  
31 26 If a contractor or subcontractor has violated this law  
31 27 twice within a three-year period, the contractor or  
31 28 subcontractor or any company or group associated with the  
31 29 contractor or subcontractor shall not be given any public  
31 30 improvement work for five years. The department of workforce  
31 31 development shall keep a list on its website of contractors  
31 32 and subcontractors who have violated this law twice within a  
31 33 three-year period and notify public bodies by restricted  
31 34 certified mail.  
31 35 A contractor or subcontractor who has been notified of the  
32 1 second violation has 10 days to request a hearing before an  
32 2 administrative law judge. If no hearing is requested, the  
32 3 contractor is barred from receiving public improvement work  
32 4 and its name and information is posted on the department's  
32 5 website. A hearing must be held within 45 days of the  
32 6 request.  
32 7 Apprentices employed on a public improvement project must  
32 8 be registered with the federal apprenticeship and training  
32 9 program. Apprentices must receive the wages set out in the  
32 10 standards of apprenticeship and do only the work specified in  
32 11 the trade to which they are apprenticed. An apprentice not  
32 12 registered with the federal program shall be paid the wage  
32 13 rate the same as any other worker.  
32 14 The bill makes an exception from the prevailing wage rates  
32 15 set out in the bill, except for the threshold requirements in  
32 16 Code section 91F.3, subsection 11, paragraph "c", for publicly  
32 17 owned horizontal transportation infrastructure projects. The  
32 18 federal Davis-Bacon Act prevailing wage rates and procedures  
32 19 shall apply.  
32 20 The bill may include a state mandate as defined in Code  
32 21 section 25B.3. The bill makes inapplicable Code section

32 22 25B.2, subsection 3, which would relieve a political  
32 23 subdivision from complying with a state mandate if funding for  
32 24 the cost of the state mandate is not provided or specified.  
32 25 Therefore, political subdivisions are required to comply with  
32 26 any state mandate included in the bill.  
32 27 The bill takes effect January 1, 2009.  
32 28 LSB 1573YC 83  
32 29 ak/nh/24